talk with the CSM and if that failed he would shoot the villain (CSM) and then commit suicide. Yet, what happened was that after having shot the villain the accused did not embark on any self-wounding action that would lead to suicide; instead he ran away.

The accused explained that he ran away because he saw blood and thought that that was a ghost. Would a hero in that position be afraid of blood and ghost? Such a hero would have expected blood to flow, as that would be the natural consequence of his act. Neither would a hero be afraid of a ghost or ghosts. Why did the accused run away and only stop to shoot at himself when he realized he was pursued and he discovered the barrier a short distance in front of him? This, in our view, shows that he was conscious all the time of what he was doing and when he discovered that he could run no further, he took what he then came to think was the only out — to commit suicide.

It is pertinent to note that some of the first utterances of the accused after his attempted suicide were 'I can't take it anymore', 'I want to die', 'sorry for my parents'. We are unable to accept Dr Nagulendran's opinion that that was the point at which the accused's psychotic depression subsided and the delusion of being a hero ceased. It seems to us that the accused's senses and rational behaviour never left him. Having considered all the evidence before us, we are not satisfied that a case has been made out that the accused was suffering from brief reactive psychosis for the period from slightly past 9am to approximately 10.40am on 17 July 1987 or any part thereof.

The trial judges found that the appellant was not a person without considerable understanding. The appellant's answers in court, even in respect of events prior to and subsequent to the period of the alleged psychosis, were very often 'cannot remember' or 'I don't know'. The trial judges said:

> At some stages answers of this type were almost mechanical that it was difficult to resist the inference, that he was, so to say, intellectually malingering.

Conclusion

We were of the opinion that the trial judges gave full and proper consideration to all the evidence, including the medical evidence. We did not find anything to indicate that they erred in law or in fact in arriving at their conclusion that the appellant was not suffering from any 'abnormality of mind' at the material time. Accordingly, we dismissed the appeal.

Appeal dismissed.

Solicitors: *Peter Yap & Co.*

Reported by *Mathavan Devadas*

Koh Swee Beng v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 6 OF 1990
YONG PUNG HOW CJ, THEAN AND CHUA JJ
9 OCTOBER 1991

Criminal Law — Murder — Provocation — When provocation can be said to have ceased — Whether accused's actions consistent with provocation — Penal Code (Cap 224, 1985 Ed), s 300 exception 1

The appellant was charged with the murder of one Tay Kim Teck. On 16 February 1988, the deceased had assaulted the appellant's 'foster' father. The appellant was enraged by this and, together with five other persons, chased and caught the deceased. The appellant was armed with a knife. While the other members of his party assaulted the deceased, the appellant stabbed the deceased several times, in the chest and legs. The medical evidence revealed that the stab wounds to the chest were sufficient in the ordinary course of nature to cause death. The appellant was convicted (see [1990] 3 MLJ 151) and he appealed.

Held, dismissing the appeal:

(1) In considering the defence of provocation, one must compare the act of provocation with that of retaliation. The reasonable relationship between the two was an essential factor to be taken into consideration.

(2) Any provocation that might have caused the appellant to lose his self-control would have ceased when the deceased fled.

(3) The appellant's repeated stabbings of the deceased were wholly disproportionate to any provocation that could have been caused to the appellant. The appellant inflicted no less than five stab wounds on the deceased, two of which were fatal, while the deceased was lying on the ground struggling against the assault of four or five persons. Such stabbings were not the acts of a man provoked but one bent on revenge.

Case referred to
1 *Vijayan* v *PP* [1975] 2 MLJ 8 (folld)

Legislation referred to
Penal Code (Cap 224, 1985 Ed) ss 300, 302

Appeal from: Criminal Case No 1 of 1989 (High Court, Singapore)

Peter Fernando for the appellant.
Ang Sin Teck (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): The appellant was charged as follows:

> That you, Koh Swee Beng, on or about 16 February 1988 at about 4.12pm at Block 66, Jalan Tiong, Singapore, committed murder by causing the death of one Tay Kim Teck, and you have thereby committed an offence punishable under s 302 of the Penal Code (Cap 224).

At the conclusion of the trial, the appellant was convicted of the charge and sentenced to death.

The prosecution's evidence was that on 16 February 1988, the eve of Chinese New Year, one Tan Ai Soon ('Tan') was assaulted by the deceased at about 4pm during a card game which was played in the market of Block 55A. He was bleeding from the mouth, his eyes were swollen and he was smelling of liquor. Tan's wife, his sons Tan Eng Poh ('Ah Poh'), Tan Eng Geok ('Ah Geok'), Tan Eng Chai ('Ah Chai'), and two daughters were at home. Ng Eng Guan ('Kew Moh'), the husband of one of the daughters came to the flat when he heard of the assault. A neighbour called for an ambulance. After Tan was conveyed to the hospital, the three sons and Kew Moh rushed to the ground floor to look for Tan's assailant.

When they got there, they found the appellant was already confronting the deceased. After a brief but heated exchange between the deceased and the appellant, the deceased fled. What happened thereafter was best described in parts of the appellant's statement under s 121 of the Criminal Procedure Code (Cap 68, 1985 Ed) which was admitted:

> Then Kim Teck ran. Ah Geok immediately gave chase and followed by Ah Chai who was standing nearby. Tua Lang Par also followed suit and chased Kim Teck. Kim Teck was running towards the direction of Lengkok Bahru and shortly he crossed the road and headed toward the direction of Blk 66, Jalan Tiong. When I was giving chase, the knife I was armed with was about 23cm long and the blade itself is about 13cm long.
>
> ...
>
> On reaching the grass patch beside the grass slope just next to Blk 66, Jalan Tiong, I saw Ah Geok and Ah Chai had already caught up with Kim Teck and they were assaulting him. Ah Geok was using a stool whilst Ah Chai was using the skeleton of an umbrella. Kim Teck was already lying on the grass patch when Ah Geok and Ah Chai was assaulting him. I would not know as to how Kim Teck fell when he was assaulted. I could not see clearly as to which part of Kim Teck's body Ah Geok and Ah Chai were assaulting as I was still running towards their direction. When I reached the grass patch, Ah Poh, Kew Moh and Tua Lang Par had also arrived at about the same time. I rushed forward towards the deceased who was still lying down and struggling with his hands to avoid the blows, and stabbed him with the knife I was armed with. I stabbed Kim Teck at the region of his hand and leg and also at other parts of his body which I cannot remember now. I remembered that I had stabbed Kim Teck about four times, two of which are on his hand and leg and the other two times I cannot remember at which part of Kim Teck's body. When I was in the act of stabbing Kim Teck, Ah Poh had taken a flower pot and threw it onto Kim Teck's head. The others were also assaulting Kim Teck but I cannot remember the part they played during the assault. After I had stabbed Kim Teck, he was still moving. I then heard one of us shouting to run away from the scene. On hearing this, I took to my heels and so did the others but we ran in different directions. I was still holding the knife in my left hand. I did notice some blood on the knife which I was carrying when I was running away.

Professor Chao, senior forensic pathologist, gave evidence. His evidence was that, among the many injuries, there were five stab wounds, of which two were in the chest and either of these was sufficient in the ordinary course of nature to cause death. The blade of the instrument used would be about 14cm long and 3cm wide with a tapering end. The force used was considerable. From the fact that one of the fatal stab wounds was from the front and the other from the back, there must have been some twisting and turning movements of the body. There was certainly a struggle.

The appellant testified in court. His evidence was that he was having drinks with a friend somewhere else. Somebody telephoned to tell him that Tan had been assaulted. The appellant was furious. He regarded Tan as his own father, and one of Tan's sons, Ah Huat, was his 'sworn' brother, meaning that they had prayed before a deity that they would help each other and that the appellant would regard Tan as his own father. They would help each other in times of difficulty no matter what the consequences might be. He rushed downstairs. On reaching the 7th floor, he met Ong Hong Thor ('Ong'), another 'sworn' brother, and remembered a knife which he had left in Ong's flat. He took the knife and tucked it at his waist before rushing down again. He said he took the knife to protect himself. (The trial judges found later that in fact he took the knife from the market on the ground floor.)

When he reached the ground floor, he saw two persons assisting Tan and saw that Tan was bleeding from the nose and mouth. He became more furious. He asked a stallholder selling joss sicks in the market about the earlier fight. The stallholder said he had not seen anything. The appellant came out of the market and saw the deceased carrying two stools. The appellant did not know the deceased personally but knew that he was an unlicensed moneylender, a drug addict and a person who had previously been detained under the criminal Law (Temporary Provisions) Act. The appellant asked the deceased why the deceased had assaulted Tan so severely. In reply, the deceased abused the appellant and the appellant's parents in vulgar language and asked the appellant who he was. The appellant said he was a sworn brother of Tan's son. The deceased said it was none of the appellant's business. He asked the appellant to call members of Tan's family down for a talk. The appellant said he was furious and was not able to think clearly. Someone threw two flower pots down. The deceased ran. They chased the deceased to Block 66 and the deceased threw a stool at Ah Geok. Ah Geok picked up the stool and the chased continued to the grass verge. Ah Chai and Ah Geok assaulted the deceased. The appellant stabbed the deceased 'at random'.

The appellant raised the defence of provocation. In relation to that defence, the trial judges made the following findings:

> Having considered the submissions of your counsel and of the DPP in the light of the evidence adduced against you and the evidence you have offered in defence, we have come to the conclusion that, although as a 'foster' son and a 'sworn brother', you must have felt a great deal of anger towards the deceased, and was therefore provoked at the time you were told of the assault, there was either no provocation or no sudden and grave provocation caused to you at the time the wounds were inflicted. In our view, the evidence shows that when you first heard of the assault, you did not lose your self-control entirely but had the presence of mind to arm yourself with a knife, that when you confronted the deceased and when he used abusive language against you, you were not sufficiently provoked to lose your self-control by attacking him there and then. In fact, you again had the presence of mind to tell Ah Geok to snatch the stools from the deceased. In our view, any provocation which would have caused you to lose your self-control at that time ceased when the deceased ran away when he was being chased by the Tan brothers.
>
> Furthermore, by the time you caught up with the deceased, he was struggling on the ground against the assault of four or five persons, and when you stabbed him, he did nothing which could be considered as provocative to any ordinary reasonable person, taking into account your age and the class of society from which you came. The Tan brothers did not lose their self-control when they assaulted the deceased in retaliation for the assault on their father. The injuries collectively inflicted by them were not serious in comparison even with the non-fatal injuries inflicted by you. We were unable to find that you were so provoked as to lose your self-control when you inflicted the fatal wounds on the deceased with a knife. We do not accept that you are entitled by your code of honour to react the way you did, which was wholly disproportionate to any provocation that could have been caused to you.

The appellant appealed. The principal ground of appeal was that the trial judges' findings were against the weight of the evidence, and were the result of incorrect and/or improper assessment of crucial aspects of the evidence. In particular, the appellant's counsel contended that the trial judges had misdirected themselves on two crucial aspects of the evidence. First, the trial judges, having found that the appellant, as a 'foster son' of Tan and a 'sworn brother' of one of Tan's sons, must have felt a great deal of anger towards the deceased and was therefore provoked at the time he was told of the assault on Tan, went on to find that there was either no provocation or no sudden and grave provocation caused to the appellant at the time when he inflicted the wounds on the deceased, and that when the appellant first heard of the assault, he did not lose self-control entirely but had the presence of mind to arm himself with a knife. Secondly, the trial judges held that when the appellant confronted the deceased and the latter used abusive language against the appellant, the appellant himself was not sufficiently provoked to lose self-control by attacking him (the deceased) there and then, but again had the presence of mind to tell Ah Geok to snatch the stool from the deceased. Counsel submitted that if 'presence of mind' meant knowledge or intention of the appellant to arm himself with a knife or to ask Ah Geok to snatch the stool, the trial judges erred. The fact that the appellant had the presence of mind to do certain acts was irrelevant in determining whether he had lost his self-control, and the question whether the appellant had lost his self-control did not turn on whether the appellant had the presence of mind, for a person who intentionally or knowingly does an act, eg arming himself with a knife, may very well have been deprived of self-control by some grave and sudden provocation. Counsel gave the common illustration of a man who on seeing his wife committing adultery with her lover and thus acting under such grave and sudden provocation immediately takes a knife and fatally stabs the lover. We rejected this argument. The illustration of counsel is totally inapt. Each case must be considered and decided on its own facts. In this case, the presence of mind as displayed by the appellant in arming himself with the knife when he heard that Tan was assaulted and later in asking Ah Geok to snatch the stool from the deceased during the short confrontation the appellant had with the deceased was definitely relevant in considering whether the appellant had lost his self-control, because it showed that the appellant knew what he was doing and that he was in control of the situation.

Counsel for the appellant next attacked the other aspects of the trial judges' findings and sought to show that the trial judges had not taken into account various relevant facts. Relying on the finding of the trial judges that the appellant, as a 'foster son' of Tan and a 'sworn brother' of one of Tan's sons, must have felt a great deal of anger towards the deceased and was therefore provoked at the time he heard of the assault on Tan, counsel submitted that the appellant's fetching the knife was the clearest manifestation of the fact that he had lost his self-control; that the provocation and anger which the trial judges found existed could not have abated when he saw his 'foster father' in a bloody state and when he confronted the deceased who then was armed with a stool and who was abusing him and his mother in vulgar Hokkien; that the deceased's running away was another reactive chain in the events and did not end the appellant's anger and loss of self-control, and that there was no interval for the cooling of tempers. In consequence, the provocation and anger felt by the appellant (which the trial judges found) had not receded and abated.

We were unable to accept this argument. Examining carefully all the evidence before the trial judges, we do not see how a case of grave and sudden provocation

falling within exception 1 to s 300 of the Penal Code (Cap 224, 1985 Ed) could be made out on behalf of the applicant. We accepted the finding of the trial judges that when the appellant heard of the assault on Tan he felt a great deal of anger towards the deceased and was therefore provoked. It may well be (as counsel for the appellant contended) that this anger and provocation did not recede or abate when the appellant saw his 'foster father' in a bloody state and they similarly did not recede or abate during the confrontation when the deceased abused the appellant and the latter's mother in vulgar Hokkien. However, the deceased fled, obviously because he was outnumbered, and he was chased by no less than five persons, excluding the appellant, who then followed and also gave chase. We agree entirely with the finding of the trial judges that any provocation which had caused the appellant to lose his self-control would have ceased at that time when the deceased fled. Furthermore, again as the trial judges found, when the appellant caught up with the deceased, the latter was struggling on the ground defending himself against the assault of four or five persons and there was nothing which the deceased did which could be considered to constitute provocation to the appellant, taking into account the appellant's age and class of society from which he came.

In any event, we were in complete agreement with the trial judges that the appellant's repeated stabbings of the deceased were wholly disproportionate to any provocation that could have been caused to the appellant. The appellant inflicted no less than five stab wounds on the deceased, two of which were fatal, while the deceased was lying on the ground struggling against the assault of four or five persons. Such stabbings were not the acts of a man provoked but one bent on revenge. It has been held by this court in *Vijayan* v *PP*[1] that in considering the defence of provocation falling within exception 1 to s 300 of the Penal Code (Cap 224, 1985 Ed) one must compare the act of provocation with that of retaliation — the 'reasonable relationship' between the two is an essential factor to be taken into consideration. The following passage of the judgment (delivered by Choor Singh J) at p 12 is most apt:

> In our judgment, under our law, where an accused person charged with murder relies on provocation and claims the benefit of exception 1 of s 300, the test to be applied is, would the act or acts alleged to constitute provocation have deprived a reasonable man of his self-control and induced him to do the act which caused the death of the deceased and in applying this test it is relevant to look at and compare the act of provocation with the act of retaliation.
>
> To put it in another way, it must be shown distinctly not only that the act which caused death was done under the influence of some feeling which took away from the accused all control over his actions, but also that the feeling had an adequate cause and here again it is relevant to compare the provocative act with the act of retaliation. If it can reasonably be said that these two acts more or less balance each other in the sense that the proved provocation could have driven a reasonable person to do what the accused did, then he is entitled to the benefit of this exception. On the other hand, if the act of retaliation is entirely out of proportion to the provocation offered, the plea of grave and sudden provocation fails. It is needless to add that the matter must be considered objectively and that the burden is on the accused to establish provocation on a balance of probabilities. *Jayasena* v *R* ([1970] 1 All ER 219).

In conclusion, we found that there was nothing which showed that the judgment of the trial judges was unsound or that their interpretation of the facts or conclusions was wrong. In our judgment, the conclusions were undoubtedly correct. A person who has been provoked by the news of an assault of another person, whether that person be his 'foster father' or otherwise, and thereafter takes it upon himself to avenge the assault must accept the serious consequences of his own act of vengeance and cannot escape the penalty under the law. The appeal was accordingly dismissed.

Appeal dismissed.

Solicitors: *Leo Fernando.*

Reported by *Mathavan Devadas*

Tan Cheow Bock v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 17 OF 1990
YONG PUNG HOW CJ, THEAN AND CHUA JJ
3 OCTOBER 1991

Criminal Law — Murder — Intention to cause bodily injury sufficient in the ordinary course of nature to cause death — Burden of proof — Penal Code (Cap 224, 1985 Ed), s 300(c)

The appellant was charged in the High Court for the murder of one Chia Chun Fong. The appellant was the deceased's neighbour. The medical evidence revealed that the fatal injury was a knife wound in the deceased's mouth. The appellant's statements recorded under s 122(5) and (6) of the Criminal Procedure Code (Cap 68, 1985 Ed) were admitted in evidence. In the statements, the appellant admitted that he went to the deceased's home to rob her. He further admitted to administering the knife wounds but claimed that he did so to stop the deceased from shouting. The appellant called medical evidence to show that the fatal injury was very difficult to inflict. The appellant was convicted as charged and he appealed.

Held, dismissing the appeal:

(1) To bring the case under s 300(c) of the Penal Code (Cap 224, 1985 Ed) the prosecution must prove the following:

(a) that the accused did an act which caused the death of the deceased;
(b) that the said act was done with the intention of causing bodily injury;